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Paper No. 9

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**SEP 26 2001**

**OFFICE OF PETITIONS**

In re Application of  
Montgomery  
Application No. 09/823,278  
Filed: March 29, 2001  
Attorney Docket No. 042503 02619

:  
:  
: DECISION GRANTING  
: PETITION  
:

This is a decision on the petition filed July 16, 2001,  
requesting that the above-identified application be accorded a  
filing date of March 29, 2001

The application was deposited on March 29, 2001. However, on May  
11, 2001, the Office of Initial Patent Examination mailed a  
"Notice" requiring an oath or declaration, the surcharge set  
forth in 37 CFR 1.16(e), the basic filing fee, additional claim  
fees, and substitute drawings in compliance with 37 CFR 1.84. The  
Notice also advised applicant that page 27 of the specification  
appeared to have been omitted.

In response, on July 16, 2001, a copy of page 27, an Abstract, a  
preliminary amendment regarding the Abstract, the required fees,  
and the present petition were filed. The petition alleges that  
page 27 was filed on March 29, 2001. In support, the petition is  
accompanied by a copy applicant's postcard receipt which  
specifically acknowledges receipt in the PTO of 50 pages of  
specification, including title page and claims.

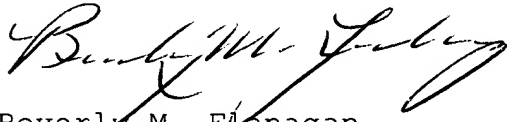
In view of the evidence presented, it is concluded that page 27  
was received on March 29, 2001, and that page 27 was later  
misplaced in the Office.

The petition is granted.

Because the date stamped postcard receipt states, "The PTO did  
not receive the following listed item(s) Abstract- 1 page," it  
cannot prove receipt of the Abstract. The Abstract was not  
present on the filing date. Therefore it cannot be considered a  
part of the original disclosure of the application.

The application is being returned to the Office of Initial Patent Examination Division for further processing with a filing date of March 29, 2001, using the copy of the page filed on July 16, 2001.

Telephone inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy